

AMENDED IN ASSEMBLY APRIL 18, 2005

AMENDED IN ASSEMBLY APRIL 11, 2005

AMENDED IN ASSEMBLY MARCH 31, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 361**

**Introduced by Assembly Member Sharon Runner**

February 11, 2005

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An act to amend Section 1189 of the Civil Code, to amend Sections 8206 and 8225 of, and to add Sections ~~8214.7~~, ~~8214.8~~, ~~8214.8~~ and 8228.1 to, the Government Code, and to amend Section 470 of the Penal Code, relating to notaries public.

### LEGISLATIVE COUNSEL'S DIGEST

AB 361, as amended, Sharon Runner. Notaries public.

Existing law generally sets forth the procedures for proof and acknowledgment of instruments executed before notaries public and prescribes administrative penalties and civil fines for violation of provisions that govern notaries public.

This bill ~~would provide that a notary public who completes and seals a certificate of acknowledgment with the knowledge that a person whose name is subscribed to the instrument that is being acknowledged as having executed the instrument did not, in fact, personally appear before the notary public at the time he or she completes and seals a certificate of acknowledgment of the instrument, as specified, is guilty of a misdemeanor. The bill would further~~ make it a misdemeanor for notary public to willfully fail to perform the required duties of a notary public or to willfully fail to keep the seal of the notary under his or her direct and exclusive

control. ~~The bill would also make it a misdemeanor for any person to solicit, coerce, or in any manner influence a notary public to perform an improper notarial act, as specified.~~ The bill would require a court to revoke the commission of a notary public, upon conviction of any offense related to his or her duties, or of any felony and would require surrender to the court of the seal of the notary public, which would then be forwarded to the Secretary of State. The bill would make other related changes. By creating new crimes, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 1189 of the Civil Code is amended to
- 2 read:
- 3 1189. (a) Any certificate of acknowledgment taken within
- 4 this state shall be in the following form:

1 State of California )  
2 County of \_\_\_\_\_ )  
3

4 On \_\_\_\_\_ before me,  
5 (here insert name and title of the  
6 officer), personally appeared \_\_\_\_\_,  
7 personally known to me (or proved to me on the basis of  
8 satisfactory evidence) to be the person(s) whose name(s) is/are  
9 subscribed to the within instrument and acknowledged to me that  
10 he/she/they executed the same in his/her/their authorized  
11 capacity(ies), and that by his/her/their signature(s) on the  
12 instrument the person(s), or the entity upon behalf of which the  
13 person(s) acted, executed the instrument.  
14

15 WITNESS my hand and official seal.  
16

17 Signature \_\_\_\_\_ (Seal)  
18

19 (b) Any certificate of acknowledgment taken in another place  
20 shall be sufficient in this state if it is taken in accordance with the  
21 laws of the place where the acknowledgment is made.

22 (c) On documents to be filed in another state or jurisdiction of  
23 the United States, a California notary public may complete any  
24 acknowledgment form as may be required in that other state or  
25 jurisdiction on a document, provided the form does not require  
26 the notary to determine or certify that the signer holds a  
27 particular representative capacity or to make other determinations  
28 and certifications not allowed by California law.

29 (d) An acknowledgment provided prior to January 1, 1993,  
30 and conforming to applicable provisions of former Sections  
31 1189, 1190, 1190a, 1190.1, 1191, and 1192, as repealed by  
32 Chapter 335 of the Statutes of 1990, shall have the same force  
33 and effect as if those sections had not been repealed.

34 SEC. 2. Section 8206 of the Government Code is amended to  
35 read:

36 8206. (a) (1) A notary public shall keep one active  
37 sequential journal at a time, of all official acts performed as a  
38 notary public. The journal shall be kept in a locked and secured  
39 area, under the direct and exclusive control of the notary. Failure  
40 to secure the journal shall be cause for the Secretary of State to

1 take administrative action against the commission held by the  
2 notary public pursuant to Section 8214.1.

3 (2) The journal shall be in addition to and apart from any  
4 copies of notarized documents that may be in the possession of  
5 the notary public and shall include all of the following:

6 (A) Date, time, and type of each official act.

7 (B) Character of every instrument sworn to, affirmed,  
8 acknowledged, or proved before the notary.

9 (C) The signature of each person whose signature is being  
10 notarized.

11 (D) A statement as to whether the identity of a person making  
12 an acknowledgment or taking an oath or affirmation was based  
13 on personal knowledge or satisfactory evidence. If identity was  
14 established by satisfactory evidence pursuant to Section 1185 of  
15 the Civil Code, then the journal shall contain the signature of the  
16 credible witness swearing or affirming to the identity of the  
17 individual or the type of identifying document, the governmental  
18 agency issuing the document, the serial or identifying number of  
19 the document, and the date of issue or expiration of the  
20 document.

21 (E) If the identity of the person making the acknowledgment  
22 or taking the oath or affirmation was established by the oaths or  
23 affirmations of two credible witnesses whose identities are  
24 proven upon the presentation of satisfactory evidence, the type of  
25 identifying documents, the identifying numbers of the documents  
26 and the dates of issuance or expiration of the documents  
27 presented by the witnesses to establish their identity.

28 (F) The fee charged for the notarial service.

29 (G) For every document to be notarized, the notary public  
30 shall require the party signing the document to place his or her  
31 right thumbprint in the journal. If the right thumbprint is not  
32 available, then the notary shall have the party use his or her left  
33 thumb, or any available finger and shall so indicate in the journal.  
34 If the party signing the document is physically unable to provide  
35 a thumbprint or fingerprint, the notary shall so indicate in the  
36 journal and shall also provide an explanation of that physical  
37 condition.

38 (b) If a sequential journal of official acts performed by a  
39 notary public is stolen, lost, misplaced, destroyed, damaged, or  
40 otherwise rendered unusable as a record of notarial acts and

1 information, the notary public shall immediately notify the  
2 Secretary of State by certified or registered mail. The notification  
3 shall include the period of the journal entries, the notary public  
4 commission number, and the expiration date of the commission,  
5 and when applicable, a photocopy of any police report that  
6 specifies the theft of the sequential journal of official acts.

7 (c) Upon written request of any member of the public, which  
8 request shall include the name of the parties, the type of  
9 document, and the month and year in which notarized, the notary  
10 shall supply a photostatic copy of the line item representing the  
11 requested transaction at a cost of not more than thirty cents  
12 (\$0.30) per page.

13 (d) The journal of notarial acts of a notary public is the  
14 exclusive property of that notary public, and shall not be  
15 surrendered to an employer upon termination of employment,  
16 whether or not the employer paid for the journal, or at any other  
17 time. The notary public shall not surrender the journal to any  
18 other person, except the county clerk, pursuant to Section 8209,  
19 or to a peace officer, as defined in Sections 830.1, 830.2, and  
20 830.3 of the Penal Code, acting in his or her official capacity and  
21 within his or her authority, in response to a criminal search  
22 warrant signed by a magistrate and served upon the notary public  
23 by the peace officer. The notary public shall obtain a receipt for  
24 the journal, and shall notify the Secretary of State by certified  
25 mail within 10 days that the journal was relinquished to a peace  
26 officer. The notification shall include the period of the journal  
27 entries, the commission number of the notary public, the  
28 expiration date of the commission, and a photocopy of the  
29 receipt. The notary public shall obtain a new sequential journal.  
30 If the journal relinquished to a peace officer is returned to the  
31 notary public and a new journal has been obtained, the notary  
32 public shall make no new entries in the returned journal. A  
33 notary public who is an employee shall permit inspection and  
34 copying of journal transactions by a duly designated auditor or  
35 agent of the notary public's employer, provided that the  
36 inspection and copying is done in the presence of the notary  
37 public and the transactions are directly associated with the  
38 business purposes of the employer. The notary public, upon the  
39 request of the employer, shall regularly provide copies of all  
40 transactions that are directly associated with the business

1 purposes of the employer, but shall not be required to provide  
2 copies of any transaction that is unrelated to the employer's  
3 business. Confidentiality and safekeeping of any copies of the  
4 journal provided to the employer shall be the responsibility of  
5 that employer.

6 (e) The notary public shall provide the journal for examination  
7 and copying in the presence of the notary public upon receipt of  
8 a subpoena duces tecum or a court order, and shall certify those  
9 copies if requested.

10 ~~SEC. 3. Section 8214.7 is added to the Government Code, to~~  
11 ~~read:~~

12 ~~8214.7. In addition to any commissioning or disciplinary~~  
13 ~~sanction or penalty assessed pursuant to Section 8214.15, a~~  
14 ~~notary public who completes and seals a certificate of~~  
15 ~~acknowledgment, as prescribed in Section 1189 of the Civil~~  
16 ~~Code, with the knowledge that a person whose name is~~  
17 ~~subscribed to the instrument that is being acknowledged as~~  
18 ~~having executed the instrument, did not, in fact, personally~~  
19 ~~appear before the notary public at the time he or she completes~~  
20 ~~and seals a certificate of acknowledgment of the instrument, or~~  
21 ~~who shall complete and seal a certificate of acknowledgment of~~  
22 ~~an instrument prior to the instrument being executed by any~~  
23 ~~person whose name is to be subscribed to the instrument, is~~  
24 ~~guilty of a public offense, and upon conviction thereof, shall be~~  
25 ~~punished either by imprisonment in a county jail not to exceed~~  
26 ~~one year, a fine not to exceed one thousand dollars (\$1,000), or~~  
27 ~~both that imprisonment and fine.~~

28 ~~SEC. 4.~~

29 ~~SEC. 3. Section 8214.8 is added to the Government Code, to~~  
30 ~~read:~~

31 ~~8214.8. Upon conviction of any offense in this chapter, or of~~  
32 ~~Section 6203, or of any felony, of a person commissioned as a~~  
33 ~~notary public, in addition to any other penalty, the court shall~~  
34 ~~revoke the commission of the notary public, and shall require the~~  
35 ~~notary public to surrender to the court with the seal of the notary~~  
36 ~~public. The court shall forward the seal, together with a certified~~  
37 ~~copy of the judgment of conviction, to the Secretary of State.~~

38 ~~SEC. 5.~~

39 ~~SEC. 4. Section 8225 of the Government Code is amended to~~  
40 ~~read:~~

1 8225. (a) Any person who solicits, coerces, or in any manner  
2 influences a notary public to perform an improper notarial act  
3 knowing that act to be an improper notarial act, including any act  
4 required of a notary public under Section 8206, shall be guilty of  
5 a misdemeanor.

6 ~~(b) Any person who solicits, coerces, or in any manner~~  
7 ~~influences a notary public to perform an improper notarial act,~~  
8 ~~including any act required of a notary public under Section 8206,~~  
9 ~~on an instrument or document affecting title to, or placing an~~  
10 ~~encumbrance on, real property consisting of a single-family~~  
11 ~~residence containing not more than four dwelling units, knowing~~  
12 ~~that act to be an improper notarial act, is guilty of a public~~  
13 ~~offense, and upon conviction therefor, shall be punished by~~  
14 ~~imprisonment in a county jail not to exceed one year, a fine not~~  
15 ~~to exceed one thousand dollars (\$1,000), or both that~~  
16 ~~imprisonment and fine.~~

17 *(b) The penalty provided by this section is not an exclusive*  
18 *remedy, and does not affect any other relief or remedy provided*  
19 *by law.*

20 ~~SEC. 6:~~

21 *SEC. 5.* Section 8228.1 is added to the Government Code, to  
22 read:

23 8228.1. (a) Any notary public who willfully fails to perform  
24 any duty required of a notary public under Section 8206, or who  
25 willfully fails to keep the seal of the notary public under the  
26 direct and exclusive control of the notary public, or who  
27 surrenders the seal of the notary public to any person not  
28 otherwise authorized by law to possess the seal of the notary,  
29 shall be guilty of a misdemeanor.

30 ~~(b) For the purposes of this section, five or more acts of failing~~  
31 ~~to perform those duties required of a notary public under Section~~  
32 ~~8206, or a notary public who willfully fails to keep the seal of the~~  
33 ~~notary public under the direct and exclusive control of the notary~~  
34 ~~public or who surrenders the seal of the notary public to any~~  
35 ~~person not otherwise authorized by law to possess the seal of the~~  
36 ~~notary public, occurring within a period of 12 months, shall~~  
37 ~~create a rebuttable presumption that the notary public was acting~~  
38 ~~willfully. This rebuttable presumption shall be in addition to, and~~  
39 ~~not exclusive of, any other proof or evidence that the notary~~  
40 ~~public was acting in a willful manner.~~

1     ~~(e)~~

2     **(b)** The penalty provided by this section is not an exclusive  
3 remedy, and does not affect any other relief or remedy provided  
4 by law.

5     SEC. 7. Section 470 of the Penal Code is amended to read:

6     470. (a) Every person who, with the intent to defraud,  
7 knowing that he or she has no authority to do so, signs the name  
8 of another person or of a fictitious person to any of the items  
9 listed in subdivision (d) is guilty of forgery.

10    (b) Every person who, with the intent to defraud, counterfeits  
11 or forges the seal or handwriting of another is guilty of forgery.

12    (c) Every person who, with the intent to defraud, alters,  
13 corrupts, or falsifies any record of any will, codicil, conveyance,  
14 or other instrument, the record of which is by law evidence, or  
15 any record of any judgment of a court or the return of any officer  
16 to any process of any court, is guilty of forgery.

17    (d) Every person who, with the intent to defraud, falsely  
18 makes, alters, forges, or counterfeits, utters, publishes, passes or  
19 attempts or offers to pass, as true and genuine, any of the  
20 following items, knowing the same to be false, altered, forged, or  
21 counterfeited, is guilty of forgery: any check, bond, bank bill, or  
22 note, cashier's check, traveler's check, money order, post note,  
23 draft, any controller's warrant for the payment of money at the  
24 treasury, county order or warrant, or request for the payment of  
25 money, receipt for money or goods, bill of exchange, promissory  
26 note, order, or any assignment of any bond, writing obligatory, or  
27 other contract for money or other property, contract, due bill for  
28 payment of money or property, receipt for money or property,  
29 passage ticket, lottery ticket or share purporting to be issued  
30 under the California State Lottery Act of 1984, trading stamp,  
31 power of attorney, certificate of ownership or other document  
32 evidencing ownership of a vehicle or undocumented vessel, or  
33 any certificate of any share, right, or interest in the stock of any  
34 corporation or association, or the delivery of goods or chattels of  
35 any kind, or for the delivery of any instrument of writing, or  
36 acquittance, release or discharge of any debt, account, suit,  
37 action, demand, or any other thing, real or personal, or any  
38 transfer or assurance of money, certificate of shares of stock,  
39 goods, chattels, or other property whatever, or any letter of  
40 attorney, or other power to receive money, or to receive or



1 transfer certificates of shares of stock or annuities, or to let, lease,  
2 dispose of, alien, or convey any goods, chattels, lands, or  
3 tenements, or other estate, real or personal, or falsifies the  
4 acknowledgment of any notary public, or any notary public who  
5 issues an acknowledgment knowing it to be false; or any matter  
6 described in subdivision (b).

7 (e) Upon a trial for forging any bill or note purporting to be  
8 the bill or note of an incorporated company or bank, or for  
9 passing, or attempting to pass, or having in possession with intent  
10 to pass, any forged bill or note, it is not necessary to prove the  
11 incorporation of the bank or company by the charter or act of  
12 incorporation, but it may be proved by general reputation; and  
13 persons of skill are competent witnesses to prove that the bill or  
14 note is forged or counterfeited.

15 SEC. 8. No reimbursement is required by this act pursuant to  
16 Section 6 of Article XIII B of the California Constitution because  
17 the only costs that may be incurred by a local agency or school  
18 district will be incurred because this act creates a new crime or  
19 infraction, eliminates a crime or infraction, or changes the  
20 penalty for a crime or infraction, within the meaning of Section  
21 17556 of the Government Code, or changes the definition of a  
22 crime within the meaning of Section 6 of Article XIII B of the  
23 California Constitution.